

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Case No. 02-80810-D2

Civil Case No. 20-11639

Honorable Denise Page Hood

DAMON LAMAR JOHNSON,

Defendant.

**ORDER DENYING WITHOUT PREJUDICE MOTION TO VACATE  
SENTENCE UNDER 28 U.S.C. § 2255 [ECF NO. 154],  
MOOTING MOTION TO DISMISS PETITION [ECF NO. 185],  
TRANSFERRING MOTION TO VACATE SENTENCE TO THE  
SIXTH CIRCUIT COURT OF APPEALS AS A SUCCESSIVE PETITION,  
AND  
CLOSING CIVIL CASE NO. 20-11639, JOHNSON v. UNITED STATES**

This matter is before the Court on Defendant Damon Lamar Johnson's Motion to Vacate Sentence under 28 U.S.C. § 2255. In response, the Government filed a Motion to Dismiss Petition as a Successive Petition. Johnson filed a reply to the Government's motion.

On March 29, 2004, a Judgment was entered after Johnson entered into a Rule 11 Plea Agreement with the Government. [ECF No. 82] Johnson pled guilty to two counts of bank robbery (18 U.S.C. § 2113(a), (b)); two counts of carjacking (18 U.S.C. § 2119); and discharging a firearm during a crime of violence (18 U.S.C. §

924(c)(1)(A)(iii) and (c)(2)). No appeal was taken on the Judgment.

On June 22, 2016, Johnson filed a Motion to Vacate Sentence under 28 U.S.C. § 2255, which the Court denied on August 17, 2017. [ECF Nos. 117, 143] The Sixth Circuit Court of Appeals denied Johnson's motion for a certificate of appealability to appeal this Court's judgment denying Johnson's Motion to Vacate on September 5, 2018. [ECF No. 151] Johnson filed a second Motion to Vacate Sentence under § 2255 on July 7, 2020. [ECF No. 154] The Government moved to dismiss the petition as a successive petition where Johnson had not received permission from the Sixth Circuit to file the petition. [ECF No. 185] Johnson replied that the Government failed to timely respond to his petition and that the second writ is subject to collateral review pursuant to "In re: Wissam Hammoud, Case No. 19-12458, 11<sup>th</sup> Circuit, July 23, 2019." [ECF No. 186, PageID.1010]

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified at 28 U.S.C. § 2241 et. seq., which amended 28 U.S.C. §§ 2244, 2253, and 2254, governs habeas corpus proceedings in federal courts. Pursuant to those amendments, an individual seeking to file a "second or successive" habeas petition must ask the appropriate court of appeals for an order directing the district court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998); *In re Wilson*, 142 F.3d 939, 940 (6th Cir. 1998). This

requirement transfers to the court of appeals a screening function which the district court previously performed. *Felker v. Turpin*, 518 U.S. 651, 664 (1996). The Sixth Circuit requires a successive § 2255 motion to be transferred to the Sixth Circuit Court of Appeals. *In re Nailor*, 487 F.3d 1018, 1022-23 (6th Cir. 2007). Any Rule 60(b) motion is considered a second or successive § 2255 motion which must be transferred to the Sixth Circuit Court of Appeals for certification. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997); *Gonzales v. Crosby*, 545 U.S. 524, 531 (2005).

After review of Johnson's petition, the Court finds that it is a second petition under § 2255. Johnson argues that based on *U.S. v. Davis*, 588 U.S. \_\_\_, 139 S.Ct. 2319 (2019) his convictions predicated on § 924(c) should be vacated and that the *In re Hammoud* case allows him to file a successive petition. [ECF No. 154, PageID.562] It may be that the *Hammoud* case may allow Johnson to file a successive petition, but in *Hammoud*, the petitioner sought leave to file such from the Eleventh Circuit. *In re Hammoud*, 931 F.3d 1032, 1035 (11th Cir. 2019) ("Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Wissam T. Hammoud has filed an application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255"). Here, Johnson did not request the Sixth Circuit to file a successive habeas as required by § 2244(b)(3)(A). The Court denies without prejudice Johnson's second petition under

§ 2255 pending transfer to and review by the Sixth Circuit of Appeals as to whether Johnson may file a successive petition before the district court.

Accordingly,

IT IS ORDERED that Damon Lamar Johnson's Motion to Vacate Sentence under 28 U.S.C. § 2255 [**ECF No. 154**] is DENIED without prejudice.

IT IS FURTHER ORDERED that the Clerk of Court TRANSFER the Motion to Vacate Sentence under 28 U.S.C. § 2255 [ECF No. 154] to the Sixth Circuit Court of Appeals.

IT IS FURTHER ORDERED that the Government's Motion to Dismiss Petition for Writ of Habeas Corpus [**ECF No. 185**] is rendered MOOT.

IT IS FURTHER ORDERED that Case No. 20-11639, *Johnson v. United States* is designated as **CLOSED** on the Court's docket.

s/Denise Page Hood

DENISE PAGE HOOD

UNITED STATES DISTRICT JUDGE

Dated: February 23, 2024